ILLINOIS STATE BOARD OF EDUCATION MEETING  
January 22-23, 2014

TO: Illinois State Board of Education  
FROM: Christopher Koch, Ed.D., State Superintendent of Education  
       Susan Morrison, Deputy Superintendent/Chief Education Officer  
       Nicki Bazer, General Counsel

Agenda Topic: Tomorrow's Builders YouthBuild Charter School  
Materials: Attachment A (Recommendation of the State Superintendent)  
Staff Contact(s): Jennifer Saba, Charter Schools

Purpose of Agenda Item:
The Charter Schools Division requests the Board to authorize the State Superintendent to withhold certification and order the District to close Tomorrow's Builders YouthBuild Charter School ("TBYBCS" or the "Charter School") at the end of the 2013-2014 school year.

Relationship to/Implications for the State Board's Strategic Plan:
By withholding certification and ordering closure of the Charter School at the end of the 2013-2014 school year, the State Board will be advancing each of its three goals. Over the last several years and in its recertification application, the Charter School has failed to establish how it will meet any of these goals. Accordingly, it is in the best interest of any current or future Charter School students that the Tomorrow's Builders YouthBuild Charter School's recertification proposal be denied and that the school be closed.

Goal 1: Every student will demonstrate academic achievement and be prepared for success after high school.  
Goal 2: Every student will be supported by highly prepared and effective teachers and school leaders.  
Goal 3: Every school will offer a safe and healthy learning environment for all students.

Expected Outcome(s) of Agenda Item:
It is expected the Board will authorize the State Superintendent to withhold certification and order the District to close the Charter School at the end of the 2013-2014 school year.

Background Information:
Please see Attachment A (Recommendation of the State Superintendent).

Financial Background:
This section is inapplicable.

Business Enterprise Program (BEP):
This section is inapplicable.

Analysis and Implications for Policy, Budget, Legislative Action, and Communications:
Policy Implications: Should the State Board decide to deny recertification and close the Charter School, the State Board will be advancing the policies behind the three goals in its Strategic Plan.
Budget Implications: None
Legislative Action: None
Communication: Should the State Board decide to deny recertification and close the Charter School, the State Board should communicate this decision to the District 189 School Board, the Charter School, the St. Clair County Regional Office of Education, and the Emerson Park Development Corporation.

Pros and Cons of Various Actions
Pros: The students at the Charter School will have the opportunity to enroll at another school or program within the district. ISBE and the District are working together to develop a transition plan for each student enrolled at TBYBCS that meets the unique needs of the student. The following programs will be considered as new placements for students: the East St. Louis High 9th Grade Center and East St. Louis Senior High School; the SIU-E East St. Louis Charter High School; the St. Clair County Regional Office Safe School (for suspension-eligible and expulsion-eligible students); and the Juvenile Transition Center (for male students with an eligible disability). For the upcoming school year, the District will consider expanding enrollment at the SIU-E East St. Louis Charter High School; and, if provided additional state resources, could also restart a District-run alternative education program at the East St. Louis High 9th Grade Center. Going forward, the District would like to issue an RFP for an alternative education provider (including but not limited to alternative charter operators).

Cons: There will be a temporary displacement of currently-enrolled TBYBCS students, but this will occur at the end of the school year and we will continue to work with the District to ensure that students have adequate supports before and during their transition into other East St. Louis schools and programs.

Superintendent’s Recommendation
I recommend that the following motion be adopted: Tomorrow's Builders YouthBuild Charter School’s renewal proposal is not in compliance with Article 27A of the School Code and therefore its recertification is denied. Further, District 189 is directed to close the Charter School at the end of the 2013-2014 school year because the school is no longer certified to operate.

The State Board of Education hereby authorizes the State Superintendent to withhold certification of Tomorrow's Builders YouthBuild Charter School and orders District 189 to close the Charter School at the end of 2013-2014 school year.

Next Steps
Upon Board authorization, Agency staff will communicate this decision to the District 189 School Board, the Charter School, the St. Clair County Regional Office of Education, and the Emerson Park Development Corporation.
STATE OF ILLINOIS
STATE BOARD OF EDUCATION

In the Matter of the Certification
of Tomorrow’s Builders Charter School,
a Charter Public School in
East St. Louis School District 189

RECOMMENDATION OF THE STATE SUPERINTENDENT

I. Introduction

In accordance with the Illinois Charter Schools Law, P.A. 89-450, as amended, 105 ILCS 5/27A-1 et seq. (effective April 10, 1996) (hereinafter, the “Charter Law”), this matter comes before the Illinois State Board of Education (“ISBE”) upon request for certification of the Tomorrow’s Builders YouthBuild Charter School (“TBYBCS” or the “Charter School”), a charter public school located in East St. Louis School District 189 (the “District”).

TBYBCS began operations in fall 2002, pursuant to a five-year charter agreement between Emerson Park Development Corporation (“Emerson Park”), the not-for-profit entity that operates the Charter School, and the East St. Louis School District No. 189 Board of Education (the “District Board”). Since that time, the District Board has twice renewed the Charter School for terms of three years and two years, respectively. The most recent renewal term expired on June 30, 2013. In its decision to renew the Charter School for a fourth term, the District Board cited various deficiencies and issues of noncompliance sufficient to justify nonrenewal, but opted instead for a “conditional” one year renewal to allow the Charter School additional time to correct these issues.

Pursuant to Section 27A-6(e) of the Charter Law, no renewal of a previously certified charter agreement shall be effective unless and until ISBE certifies that the agreement is consistent with all provisions of the Charter Law. [105 ILCS 5/27A-6(e).] ISBE staff has completed a careful review of the renewal agreement and proposal for the Charter School and recommends that the ISBE Board withhold certification and order the District to close the Charter School at the end of the 2013-2014 school year. This recommendation is based on the following findings:
2. The Charter School has not complied with teacher certification requirements applicable to all charter public schools.
3. The Charter School has failed to maintain accurate records of student attendance and to accurately report enrollment.
4. The Charter School has not articulated a viable educational plan to drive successful student outcomes.
5. Despite intensive technical assistance from the state, the Charter School’s history of significant noncompliance with special education law is likely to continue.
6. The Charter School has failed to meet or make reasonable progress toward the performance standards and requirements established by its charter agreement with the District.

II. Factual Background

District Intervention

1. Under Section 2-3.25f of the Illinois School Code, the State Board has the authority to take aggressive actions to promote stability and improve student achievement in chronically-failing school districts, up to and including removing the school board members or dissolution of the district. [105 ILCS 5/2-3.25f.]
2. In 2009-2010, the District entered Academic Watch Status Year 4 due to consistent failure to make Adequate Yearly Progress (AYP).
3. In April 2011, the ISBE Board authorized State Superintendent Christopher A. Koch (the “State Superintendent”), to pursue an intergovernmental agreement with the District to institute additional oversight by ISBE for District planning and operations; and, should the District refuse to enter into such an agreement, authorized the State Superintendent to take all actions available under applicable law and/or intervene in the District to help address the serious academic, financial, and operational challenges faced by the District.
4. In June 2011, ISBE and the District entered into an Intergovernmental Cooperative Agreement as authorized by the ISBE Board. In its oversight capacity, ISBE appointed a liaison to the District (the “Liaison”) with authority to review and approve or deny any
proposed personnel, contracting, or budgetary decisions of the District. In the event of a contested matter, the Liaison was authorized to refer the matter directly to the State Superintendent for a determination and/or action on behalf of the District.

5. In April 2012, ISBE sent the District a Notice of Termination of Intergovernmental Cooperative Agreement.

6. In June 2012, the ISBE Board authorized the State Superintendent to move under Sections 2-3.25f and 3-14.28 of the School Code to remove the members of the District Board and to appoint an Independent Authority to govern the District in its place.

7. Subsequently, the District Board (and certain members in their individual capacities) sued the State Superintendent, the ISBE Board and its members, and the Regional Superintendent of Schools, and received a restraining order to prevent their removal.

8. In May 2013, the parties settled the litigation by entering into a binding Consent Decree that like its predecessor Intergovernmental Cooperative Agreement gives ISBE broad control over personnel, contracting, policy, curriculum, and other decisions for the District.

9. The Consent Decree defines contract decisions to include charter school contracts.

10. While ISBE is responsible for evaluating compliance with the Charter Law and certifying all charters in the state, ISBE’s more formal oversight role in the District makes it imperative for ISBE to ensure that charter schools operating in the District are in compliance with the law.

**TBYBCS History**

1. In fall 2002, Emerson Park received an initial 5-year charter for TBYBCS from the District. The Charter School’s first term ended at the end of the 2006-2007 school year.

2. On June 10, 2007, Board members voted unanimously to renew the Charter School for a second term subject to ten conditions identified by the District’s then superintendent, Dr. Theresa Saunders:
   i. The Charter School would accept a three-year renewal term: SY2008 through SY2010;
   ii. The Charter School would accept a per pupil funding rate of 75 percent of the District’s per capita tuition charge;
   iii. Enrollment at the Charter School would be capped at 150;
iv. Students at the Charter School would each receive the state-required 300 instructional minutes per school day.

v. The Charter School would accept Title I funds and meet Adequate Yearly Progress (“AYP”) standards for assessment and achievement;

vi. The Charter School would remain located at 1405 State Street, East St. Louis, IL, 62202;

vii. The Charter School would provide the District with evidence of title to its facility;

viii. The Charter School would adopt a Freedom of Information Act policy consistent with Illinois law;

ix. The District would continue to control special education services at the Charter School; and

x. The District would not provide “blanket approval” of any grants pursued by the Charter School.


4. Because the Parties were unable to reach an agreement on renewal terms, the Charter School operated during the 2010-2011 school year without an executed charter agreement.

5. On January 24, 2011, Board members voted unanimously to deny the Charter School’s renewal proposal.

6. Under the Charter Law in effect in January 2011, the Charter School had the right to appeal the District’s nonrenewal decision to ISBE. On February 18, 2011, ISBE received the TBYBCS appeal and began to process it in accordance with statutory timelines.

7. On April 15, 2011, the State Superintendent, then ISBE General Counsel Darren Reisberg, and other ISBE staff visited the Charter School.

8. On June 8, 2011, ISBE attorneys held a conference call with Lee Triefenbach, the District’s interim superintendent; Greg Moats, appointed by ISBE as a liaison between the Agency and the District; and Garrett Hoerner, the District’s legal counsel. Pursuant to ISBE’s authority under the 2011 Intergovernmental Cooperative Agreement, ISBE staff ordered the District to reverse itself and to approve the Charter School for a two-year renewal term, conditioned on: (i) the Charter School’s moving to a new facility; and (ii) the District handling all special education services at the Charter School.
9. With substantial ISBE involvement, Emerson Park and the District Board executed a charter agreement on August 15, 2011, for school years 2011-12 and 2012-13, and a separate Accountability Plan. Because ISBE negotiated the renewal terms, no separate ISBE certification was issued.

10. The Accountability Plan sets clear performance targets in six (6) different compliance categories: pupil performance; fiscal management; facilities; professional climate; legal compliance; and charter compliance.

11. On February 18, 2013, the District voted to renew the Charter School for one additional year (SY2014).

12. Under Section 6(e) of the Charter Law [105 ILCS 5/27A-6(e)], the State Board is required to certify that any renewal of a previously certified charter agreement is consistent with all provisions of the Charter Law before the renewal may go into effect.

13. This matter is now before the State Board for certification.

III. Discussion

In reviewing a local school board’s decision to approve a charter school, the State Board must determine whether the proposal is in compliance with the Charter Law, including the fifteen (15) requirements listed in Section 27A-7(a). [105 ILCS 5/27A-7(a).] After completing its review, the State Board must either certify compliance or recommend that the proposed contract be modified for consistency with the Charter Law before it may take effect. If the agreement is resubmitted in a form that is not consistent with the Charter Law, the State Board may refuse to certify the agreement. [See 105 ILCS 5/27A-6(d) thru (e).] It follows that if a charter school proposal has so many deficiencies that it cannot be cured through routine technical assistance and resubmission, the State Board may refuse to certify. Here, the Charter School has a history of operational dysfunction and poor student outcomes; and rather than advance any discernible remediation plan, its renewal proposal appears to maintain the status quo. The likelihood of harm to students caused by allowing the Charter School to continue operating is so great that the State Board should deny recertification and order that the District close the Charter School at the end of the 2013-2014 school year.
A. THE CHARTER SCHOOL FACES IMMINENT INSOLVENCY.

Section 27A-7(a)(9) of the Charter Law requires “evidence that the terms of the charter as proposed are economically sound for both the charter school and the school district” prior to certification. [105 ILCS 5/27A-7(a)(9).] A proposal to establish a new charter school must include a proposed budget for the term of the charter [105 ILCS 5/27A-7(a)(9)], while a renewal proposal must include “a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that will allow comparison of those costs to other schools or other comparable organizations[.]” [105 ILCS 5/27A-9(b)(2).] Because charter schools receive public funds, each charter school must also have an annual, independent audit conducted by a qualified auditing or accounting firm, and must file its audit and Form 990 with the State Board by no later than December 1 of the fiscal year. [105 ILCS 5/27A-5(f).]

Since the primary mechanism for funding charter schools is “tuition”—a per pupil amount paid by the local school district that approximates the district’s per pupil expenditures—charter schools must attract and retain a certain number of students to remain viable. When analyzing the solvency of a charter school, therefore, the State Board relies heavily on trends in the local district’s per pupil expenditures as well as the charter school’s enrollment to predict future growth or losses for the school. Like all financial forecasts, anticipating the future financial health of a charter school is inherently uncertain. Notwithstanding, a long operating history (as with TBYBCS) translates to greater accuracy in assumptions and ultimately greater forecast accuracy.

TBYBCS has struggled financially for its last two charter terms. As reflected in its audited financial statements, the Charter School had deficit spending in four of the last five fiscal years, reaching a high of $(165,280) in fiscal year (FY) 2012. While the Charter School was able to maintain a small positive fund balance of $24,384 going into FY2013, this financial resource will soon be depleted without a significant infusion of new revenue, either through increased enrollment, increased tuition, or both.

To demonstrate how it will achieve a balanced budget, TBYBCS projects that its enrollment will be 120 in 2013-2014, and that enrollment will increase by 20 students each year until reaching capacity at 200 students in 2017-18. Enrollment trends, however, belie these
optimistic projections. Fall Housing reports show a dramatic three-year decline in student enrollment: from 123 students in school year 2010-2011, to 80 students in 2011-12, to only 63 students in school year 2012-13. Estimated student enrollment for the 2014 school year is 98, which is 22 students less than the Charter School’s projected student enrollment of 120.

Even if the Charter School somehow reaches its enrollment goal for SY2014 and holds enrollment steady for the next five years, the Charter School will still experience a negative end fund balance beginning in FY2015, which by FY2018 will result in a cumulative deficit of $(485,947). The greater likelihood, however, is that the Charter School will continue losing students and will receive less tuition for students it has enrolled as District 189 continues its efforts to balance its budget. This will accelerate and magnify the inevitable insolvency of the Charter School. In short, the terms of the Charter School are not financially sound, in violation of Section 27A-7(a)(9) of the Charter Law. [105 ILCS 5/27A-7(a)(9).] On this basis alone, the Charter School should not be certified for another term and the District should be ordered to close it at the end of this school year.

B. TBYBCS HAS NOT COMPLIED WITH TEACHER CERTIFICATION REQUIREMENTS APPLICABLE TO ALL CHARTER PUBLIC SCHOOLS.

Under Section 27A-10(c-10) of the Charter Law, at least 75 percent of teachers employed by a charter school must hold a teaching license. As a charter school established prior to 2009, this requirement went into effect for TBYBCS beginning in the 2012-2013 school year. [See 105 ILCS 5/27A-10(c-10).]

The Charter School has high teacher turnover, which complicates ISBE’s determination of compliance with the licensure requirement. Notwithstanding, it appears clear that the Charter School is not currently in compliance. In a form collected by ISBE for purposes of compiling the Biennial Charter School Report, the Charter School reported seven (7) total FTE instructional personnel for the 2012-2013 school year, but left blank the question of how many of these FTE instructors maintained an Illinois teaching license.

At present, the Charter School’s home webpage, www.tybs.org/District, lists five teachers responsible for the following 18 courses: World History; U.S. History; Federal and State Constitutions; Biology; Chemistry; Earth Science; Ecology; Algebra I and II; Trigonometry; Geometry; Driver’s Education; Credit Recovery/IT Department; English I, II, III, and IV; and
Creative Writing. Of these five individuals, only three individuals—the teacher responsible for the social sciences and driver’s education courses; the teacher responsible for the English courses; and the teacher responsible for the Credit Recovery Program—appear to be appropriately licensed for their placements. As to the other two individuals:

- The teacher responsible for the math courses is licensed only to teach History, World History, U.S. History, and Psychology; and
- The teacher responsible for the science courses holds only a special education teaching license.

The District also reports that a physical education teacher not listed on the Charter School’s home webpage does not hold a valid Illinois teaching license. In sum, only 3 of the 6 teachers at the Charter School—50 percent—are appropriately licensed, in clear violation of Section 27A-10(c-10) of the Charter Law. Although Charter Schools may legally employ individuals in administrative positions who are not licensed, it is worth noting that the current principal of the Charter School, James McKay, likewise has no administrative license and does not appear to have any background in public education prior to his employment at the Charter School.

**C. THE CHARTER SCHOOL HAS FAILED TO MAINTAIN ACCURATE RECORDS OF STUDENT ATTENDANCE AND TO ACCURATELY REPORT ENROLLMENT.**

Although both traditional public and charter public schools are publicly-funded, there is a significant difference in how their funding is calculated. Specifically, while the state funds local school districts based on Average Daily Attendance (“ADA”), charter schools must be paid based on enrollment. The General State Aid calculation for any school district that has authorized a charter school includes the attendance of students enrolled in the charter, which in part offsets the tuition payments the district makes to the charter school based on its enrollment. If enrollment is overstated or attendance is inaccurately or underreported, the financial impact of the charter school on the local school district is compounded. This is so because the district will be paying for students not actually enrolled, and/or not receiving its full General State Aid entitlement because attendance has not been properly recorded. For this reason, it is absolutely critical that charter schools accurately report enrollment and maintain accurate records of student attendance.
Consistent with that, Section 27A-11(a) of the Charter Law requires each charter school to: (i) determine the school district of residence for each pupil enrolled in the charter school; (ii) report the aggregate number of pupils resident of a school district who are enrolled in the charter school to the school district of residence; and (iii) maintain **accurate** records of daily attendance, sufficient to file General State Aid claims. [See 105 ILCS 5/27A-11(a).] TBYBCS has not complied with these basic clerical requirements. Instead, the District had observed and documented numerous errors, omissions, and anomalies in the Charter School’s attendance and enrollment reports, including but not limited to the following:

- The District collaborated with both of its charter schools to develop a short rubric for evaluating charter school operations, and conducts weekly walkthroughs of its charter schools using this rubric for evaluative purposes. Attendance is one indicator evaluated. In many such weekly walkthroughs of the Charter School, District personnel have observed far fewer students in attendance than reported as enrolled. For example, in December 2012, the Charter School reported 101 students as enrolled for purposes of its quarterly payment. Lawrence Tourijigian, the District’s Data Manager, was only able to verify the enrollment of 56 students in Skyward. And, at the December 6, 2012, site visit, evaluators observed only 39 students in attendance, evidence that the Charter School retains students on its enrollment roster who should be removed under the District’s enrollment policies (removal after 10 consecutive days of no show/no communication).

- The Charter School’s reported attendance regularly drops in the afternoon on weekly walkthrough days, evidence that students are coached to come to school only for purposes of the weekly walkthrough and permitted to leave shortly thereafter.

- There is a persistent mismatch between the Charter School’s reported enrollment and the number of students recorded in Skyward (the District’s online administration system) as either present or absent on a given day. For example, in the last full week of January 2012, the Charter School had reported a student enrollment of 81 students (a drop of 11 students from the Charter School’s reported enrollment in the first week of January 2012: 92 students). However, in its January 30, 2012, Skyward entry, the Charter School recorded just 41 students enrolled in Skyward; of this 41, only 10 students had a full day schedule and 1 student had a partial (half-day) schedule, leaving 30 students unaccounted
for. Of this subset of 11 students where attendance could be checked, only 5 students were marked present in school for that day.

- In the District’s examination of enrollment reports submitted by the Charter School for its SY2014 first and second quarterly payments, the District identified multiple anomalies, including but not limited to: students known to have dropped from the program, students living out of district, incomplete and varying enrollment forms, and students who had aged out of or had already completed a high school program.

The Charter School attempts to justify these deficiencies by pointing out that the School serves a large population of at-risk students, including students experiencing homelessness; thus, they argue, enrollment is fluid and attendance is difficult to maintain. This argument is without merit. Student demographics may provide context for the Charter School’s chronic high truancy and mobility rates (and corollary low attendance rate), but the fault for any noncompliant reporting lies squarely with the Charter School and its failure to implement and follow appropriate administrative systems and processes.

D. THE CHARTER SCHOOL HAS NOT ARTICULATED A VIALBE EDUCATIONAL PLAN TO DRIVE SUCCESSFUL STUDENT OUTCOMES.

Charter schools have flexibility from certain state and local rules in exchange for a higher degree of accountability for school performance. To receive certification, a charter proposal must articulate a clear plan for how it will use flexibilities available under Charter Law to implement programs and actions that improve student learning. Under Section 27A-7(a) of the Charter Law, the specific areas of academic capacity that must be addressed in any proposal include the goals, objectives and pupil performance standards to be achieved by the charter school; the educational program; the plan for evaluating pupil performance; and procedures for taking corrective action in the event that pupil performance standards are not met. [105 ILCS 5/27A-7(a)(5), 27a-7(a)(7), (8).] Any proposal to renew the charter of a charter school must include “a report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter proposal[.]” [105 ILCS 5/27A-9(b)(1).]

The Charter School’s most recent renewal proposal did not contain a report on its progress toward meeting the terms of its last renewal, as required by Section 27A-9(b)(1) of the
Charter Law. [105 ILCS 5/27A-9(b)(1).] While this is a technical violation of the law, of far greater concern is the Charter School’s failure to articulate a viable educational plan to drive successful student outcomes.

Since opening in Fall 2002, the Charter School has never had more than 14.3 percent of students meet state standards in reading, a proficiency rate the Charter School attained in school year 2013, the most recent tested year. The Charter School has never had a student exceed state standards in reading, and has never had a student meet or exceed state standards in math or science. Based on these outcomes, staff in ISBE’s Center for Performance ranks TBYBCS as the lowest-performing Illinois public school of 2013.

All metrics and accountability measures for student engagement, such as attendance, mobility, chronic truancy, dropout rates and graduation rates, paint an equally bleak picture and suggest that the District—itself chronically underperforming—does a better job educating East St. Louis students than the Charter School. In school year 2013, the Charter School’s attendance rate was 83 percent (compared to the District’s rate of 92 percent); mobility rate was 179.8 percent (compared to the District’s rate of 23.1 percent); chronic truancy rate was 100 percent (compared to the District’s rate of 66 percent); dropout rate was 130.2 percent (compared to the District’s rate of 7.3 percent); 4-year graduation rate was 11.5 percent (compared to the District’s rate of 65.4 percent); and 5-year graduation rate was 40.9 percent (compared to the District’s rate of 67.2 percent). The Charter School fails on even the most basic AYP benchmark: participation rate in standards-based assessments. In school year 2013, only 73.9 percent of students at the Charter School in grade 11 were tested in reading and math, while the percentage of students tested in these subjects across the District was 98.5 percent.

It is important to note that when Emerson Park (the not-for-profit that holds the charter) chose the charter school model, it accepted with it the state accountability system and the requirements of that system. That said, ISBE is acutely aware of the shortcomings of the state’s current accountability system, especially as it applies to a school like TBYBCS that self-identifies as a “vocational/technical careers charter high school” and targets and serves former dropouts and students at risk for dropping out. If one accepts, however, that standards-based assessments and the notion of Adequate Yearly Progress provide some insight into school performance, then it is clear that students have no greater chance of success (and are perhaps more likely to fail) when they elect to enroll in the Charter School over a traditional public
school or an alternative placement. While the Charter School asserts that 100 percent of its students have been unsuccessful in other educational programs, the District disputes this, and finds that most or all TBYBCS students could be successful in a comprehensive high school program.

More importantly, despite the Charter School’s mission and vision, ISBE sees no evidence in its renewal proposal of unique and/or research-based interventions for at-risk students; and minimal quantifiable achievement goals such as skill growth, credit gains, and retention that are unique to the Charter School and appropriate to its student population. It is, therefore, clear that TBYBCS does not have the capacity to act as an alternative education provider in the East St. Louis community.

As one of the poorest-performing public schools in Illinois since its opening in 2002, a renewal proposal for TBYBCS that includes no discernible remediation plan and instead maintains the status quo violates the requirement of the Charter Law that any charter proposal articulate a viable educational plan to drive successful student outcomes.

E. DESPITE INTENSIVE TECHNICAL ASSISTANCE FROM THE STATE, THE CHARTER SCHOOL’S HISTORY OF SIGNIFICANT NONCOMPLIANCE WITH SPECIAL EDUCATION LAW IS LIKELY TO CONTINUE.

Charter schools in Illinois are required to comply with all state and federal laws, rules and regulations relating to students with disabilities. Depending on the authorizer type, the structure of enforcement may be different: a charter school that has been authorized by a local school board is considered as a school of the district over which that district exercises jurisdiction, while a school that has been authorized by the state is considered as a local education authority in its own right. [23 Ill. Admin. Code 226.60.] Within this scheme, TBYBCS is a school of the District; however, this does not relieve the Charter School of its affirmative and ongoing duty to offer a continuum of services to students with disabilities and to be an invested partner with the District on IDEA compliance.

District 189 has documented multiple examples of IDEA noncompliance by the Charter School. For example, at the December 5, 2012, site visit, evaluators found that the Charter School maintained no records of IEPs for any student enrolled at the School. The School was not able to identify which students had disabilities and had made no attempt to find out which students had disabilities based upon existing data and feedback from the District. Based on these
findings, the District imposed a corrective action plan, which was reportedly not adhered to by the Charter School.

Likewise, at the prior year December site visit, Director Forby reported that the Charter School did not actively identify students with disabilities, and also that many students declined special education services in order to remain at the Charter School (seemingly contradictory statements). She blamed a poor working relationship with the District and a lack of resources, respectively, for these violations.

To ensure that charter schools understand the special education laws and develop a thoughtful plan for implementation, ISBE has developed a rubric that identifies all areas of compliance and asks charter schools and development teams to document (i) what actions the school will take to remain in compliance; and (ii) the individuals at the charter school and the school district responsible for implementation. ISBE requires that new charter schools and charter schools up for renewal complete this rubric as a condition of certification. Consistent with this longstanding practice, and to stem ongoing noncompliance by TBYBCS, the Charter School was asked to complete the rubric as part of its 2013 renewal application. ISBE evaluators noted major deficiencies with the Charter School’s initial submission, including but not limited to the following:

- The responses had in part been simply cut-and-pasted directly from regulations ISBE had provided on the form for reference; this made it clear to ISBE evaluators that the Charter School had not carefully reflected on its actual practices, in the context of its available resources and relationship with the District;
- Despite its reliance on references on the form, many of the Charter School’s responses mischaracterized aspects of federal law, and state rules and regulations regarding the delivery of special education services to students; and
- The Charter School had not provided sufficient information regarding the personnel (title and/or name) who would ensure implementation of the services for the requirements listed in the application. Alternatively, the personnel listed were not sufficient or sufficiently qualified to ensure implementation of the services for the requirements listed in the application. Given the Charter School’s history of noncompliance with special education laws and its contentious relationship with the District, this deficiency was considered more seriously than it might be with other applications.
Due to the major deficiencies in the Charter School’s submission, ISBE offered the Charter School onsite technical assistance to walk through the rubric requirements and develop an approvable application. Between May and August 2013, ISBE communicated and met with the Charter School and the District to develop an approvable application. On multiple occasions throughout the ISBE intervention, the Division Supervisor for the Department of Special Education and an ISBE principal education consultant had to intervene to ensure appropriate participation from the Charter School. Examples of the Charter School’s inappropriate participation include:

- Delegating administrative responsibility for participating in an onsite technical assistance work group to a Charter School employee who lacked the necessary qualifications and leadership;
- Failing to timely provide data during the technical assistance meetings when such data was required to complete the application;
- Delaying the completion of the application in order to question the validity of information provided by ISBE and the intent of the technical assistance; and
- Requiring multiple verbal and written reminders to complete work necessary in order to complete the application.

With the intensive guidance and supervision of the Division Supervisor for ISBE’s Division of Special Education Services and the ISBE principal education consultant, the parties developed a minimally approvable application. Notwithstanding, because of the Charter School’s chronic history of failing to meet the needs of students with disabilities and its deficient participation in ISBE’s most recent technical assistance efforts, staff is not confident that the Charter School will satisfactorily execute the responses outlined in the application in order to remain in compliance.

**F. THE CHARTER SCHOOL HAS FAILED TO MEET OR MAKE REASONABLE PROGRESS TOWARD THE PERFORMANCE STANDARDS AND REQUIREMENTS ESTABLISHED BY ITS CHARTER AGREEMENT WITH THE DISTRICT.**

Each charter school’s charter—or contract—establishes the framework within which the school operates and provides public support for the school for a specified period of time. Many
charter contracts incorporate a separate accountability plan to clearly articulate expectations and the metrics the authorizer will use to evaluate school-wide progress.

At each formal site visit conducted by the District during the last term, the evaluation review team observed and documented examples of noncompliance with either or both the Charter Agreement and the Accountability Plan. For example, at the May 22, 2012, site visit, evaluators asked the Charter School to describe its plan for professional development. While the Charter School explained that staff is expected to attend professional development activities throughout the year, it did not indicate what opportunities are made available (either through the Charter School or the District) and did not produce any professional development plan or evidence of past staff participation, as required by Section 1(c) of the Accountability Plan (Education Elements). Likewise, State Board staff found that the Charter School was not in good standing with the Secretary of State’s Office, in violation of Sections 3(F) of the Accountability Plan (Charter Compliance) and 5(d) of the Charter Agreement (Corporate Status). Finally, the evaluation review team was unable to conduct classroom visits, because students were reportedly on a field trip for the entire last week of school. This made it impossible for evaluators to fully review the Charter School’s operations, practices and performance, as required by the Accountability Plan.

The District’s most recent site visit occurred on October 10, 2013. In a memorandum submitted to Emerson Park Executive Director Vickie Forby on October 30, 2013, the District identified the following areas of concern:

- Discrepancies between the Charter School’s master course schedule maintained in the District’s electronic database system and a paper copy of the schedule distributed at the site visit;
- A master course schedule under which some students would not receive the minimum number of instructional minutes;
- Discrepancies between paper lesson plans and what evaluators observed being taught in the classroom;
- Incomplete and outdated personnel information; and
- No professional development records.

The Charter School’s failure to appropriately administer assessments is another area of recurring noncompliance. The Charter School’s Accountability Plan requires that all students
take the state-mandated Prairie State Achievement Examination ("PSAE") or alternative assessment (Section 1(b)(i), Accountability Requirements), and that the Charter School participate fully in the EXPLORE and PLAN tests. The Charter School’s PSAE participation rate does not even approach NCLB targets, as previously addressed; and in SY2013 the Charter School failed to administer EXPLORE and PLAN within the District’s timelines, alleging that the tests had been accidentally discarded.

Indeed, each District compilation of findings and observations with respect to TBYBCS is replete with evidence of noncompliance with the Charter Agreement and applicable state and federal law, ranging from issues that ISBE would classify as minor or technical violations (e.g., submission of a renewal proposal one month later than required by the Charter Agreement) to major violations that pose an imminent threat to the health, safety and well-being of students (e.g., failure to provide timely immunization data to the District for state reporting; course offerings that do not meet the state minimum requirements for high school graduation; school personnel without background checks on file; etc.). While the District Board voted to extend its charter agreement with TBYBCS for one year to allow the Charter School “the opportunity to address compliance,” the State Board finds that after two conditional renewals with the same objectives, further attempts at remediation would be futile. Therefore, recertification should be denied.

For all of the above reasons, I find that the Charter School proposal is not in compliance with Article 27A, and recommend that the Board withhold certification and order the District to close the Charter School at the end of the 2013-2014 school year.

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Christopher A. Koch, State Superintendent

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Date